IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.28554 of 2013 (O&M)
Date of Decision:- 12.10.2015

M/s Tyfort Sales Promotion Pvt. Ltd.

.....Petitioner

Versus

Secretary to the Government of Punjab and others

.......Respondents

CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI

- **Whether Reporters of local papers may be allowed to see the judgment?**
- **To be referred to the Reporters or not?**
- **Whether the judgment should be reported in the Digest?**

Present: Mr. R.S.Rai, Sr. Advocate with
Mr. Harsh Bunger, Advocate
for the petitioner.

Mr. K.K.Gupta, Additional A.G., Punjab.

Mr. Rupinder S. Khosla, Senior Advocate with
Mr. Aman Sharma and Mr. K.S. Mamrat, Advocates
for respondent Nos. 2 to 4.

P.B. BAJANTHRI, J.

In this petition, the petitioner has questioned the order dated 23.05.2013 (Annexure P-16) passed by the Ist respondent (Secretary to the Government of Punjab, Department of Housing and Urban Development-cum-Revision Authority) by which order of the Appellate Authority dated 05.05.2010 (Annexure P-8) is set aside while upholding the order of 3rd respondent-Estate Officer, PUDA, Patiala dated 20.07.2009 (Annexure P-2).

(2) Brief facts of the case are as follows:-

(a) The petitioner is a Private limited Company duly registered with the Registrar of Companies. The petitioner Company pursuant to advertisement by the respondent authorities, participated in auction bid for 5510.50 square yard commercial plot No. 40-D, Choti Bardari, Patiala at Rs.50,500 per square yard. The petitioner being a successful bidder for the aforesaid commercial plot deposited 10% +15% of the value of the auction bid i.e. Rs.2,81,30,000/- and Rs.4,14,43,000/- was deposited on 19.03.2008 and 17.04.2008 respectively. Total estimated amount for the aforesaid plot was Rs.27,82,80,250/-.

(b) On 13.06.2008 Punjab Urban Planning and Development Authority (for short "PUDA") communicated allotment of auction of commercial site to the petitioner. In the said communication relevant portions for the subject matter is reproduced herein:-

"3. "MODE OF PAYMENT

3.1 FOR INITIAL 25%

i) Payment of Rs.6,95,73,000/- made by you has already been adjusted towards initial 25% of the sale price of site.

3.2 FOR BALANCE PAYMENT OF 75%

i) The balance amount of Rs. 20,87,07,250/- (Twenty crore eighty seven lacs seven thousand two hundred fifty only) being 75% of the tentative price of site, can either be paid in lump sum without any interest within 60 days from the date of issue of allotment letter or in 4 equated yearly installments alongwith an interest @ 12% per annum as indicated in the schedule given in below:

(ii) In case payment is made in installments, payment schedule shall be as under:-

Installment Number	*Due Date*	*Principal amount*	*Interest*	*Total amount payable*
1	*2*	*3*	*4*	*5*
Ist	*19.3.2009*	*5,21,76,812.00*	*25044870*	*7,72,21,682.50*
2nd	*19.3.2010*	*5,21,76,812.00*	*18783652.5*	*7,09,60,465.00*
3rd	*19.3.2011*	*5,21,76,812.00*	*12522435*	*6,46,99,247.50*
4th	*19.3.2012*	*5,21,76,812.00*	*6261217.5*	*5,84,38,030.00*
total		*20,87,07,250.00*	*62612175*	*27,13,19,425.00*

iii) In case balance 75% payment is made in lump sum with 60 days from the date of issue of allotment, a rebate of 5% shall be admissible on this balance amount. However, in case payment of amount due is made in lump sum subsequently at any stage, a rebate of 5% on the balance principal amount shall also be admissible.

iv) In case of any advance payment which is not less than the next due installment, then the remaining installment shall be rescheduled.

v) In case of non-payment of installments by due date, allottee shall be liable to pay penalty on the amount due at the following rates for delayed period.

Sr. No.	*Delay Period*	*Rate of penalty*
1	If the delay is upto one year	12% Normal applicable rate of Interest + 3% p.a. for the delayed period
2	If the delay is upto 2 years	12% Normal applicable rate of Interest + 4% p.a. for the delayed period
3	If the delay is upto 3 years	12% Normal applicable rate of Interest + 5% p.a. for or more the delayed period

However, before imposing penalty, Estate Officer will give notice and provide opportunity of being heard to the allottee and will pass an order in writing. Provided that penalty so imposed shall not exceed the amount due including principal and the interest chargeable from the allottee."

(c) On 07.11.2008 PUDA revised the terms and conditions relating to 4 installments as the plot area was reduced from 5510.50 square yard to that of 5214.230 square yard. Proportionately, initial deposit of 25% and so also 75% was fixed at the pro rata. The total amount was reduced to be Rs.25,18,69,3341 instead of Rs.27,82,80,250/-. 25% amount was revised from Rs.6,95,73,000/- to that of Rs.6,29,67,333/-.

(d) The petitioner was required to pay a sum of Rs. 7,16,85,887.25 as Ist installment on 19.03.2009. The said amount was inclusive of principal amount of Rs. 4,86,36,410.25 and interest amount of Rs. 2,32,49,477/-. The petitioner could not remit the aforesaid amount and it requested the authorities to waive of various conditions, while assigning the reasons that there is a global recession etc.

(e) PUDA issued a show cause notice on 09.07.2009 for not remitting Ist installment to the petitioner. Since there was no response from the petitioner two more show cause notices were issued on 24.08.2009 and 09.10.2009. In fact on 09.10.2009 the petitioner was directed to be present before the concerned authority on 20.10.2009. Despite the aforesaid show cause notices, there was no response from the petitioner and having regard to such conduct, PUDA cancelled the allotment of subject commercial plot on 20.11.2009 (Annexure P2). Thereafter, on 04.12.2009, the petitioner was informed that a sum of Rs.3,05,64,463/- has been forfeited out of total deposit of Rs.6,95,73,000/-.

(f) The petitioner feeling aggrieved by the order dated 20.11.2009 read with 04.12.2009 preferred an appeal before the Appellate authority on 07.11.2009. Subsequently, on 04.01.2010 petitioner informed the PUDA, Patiala that the petitioner is depositing one crore as a part payment of subject commercial plot. On 26.03.2010, the petitioner wrote a letter for the surrender of commercial site No. 40-D, Choti Bardari, Patiala while assigning the reasons that there is a drop in rentals due to global recession etc. It was requested to refund the deposited amount without deduction of any penal interest and penalty amount, keeping in mind the market scenario. Similarly, a reminder was sent on 26.04.2010. The Appellate Authority-respondent No.3 allowed the petitioner's appeal in part and modified the 4th respondent-Estate Officer's decision to forfeit of 10% to that of 5% amount.

(g) Both the Estate Officer, PUDA, Patiala and the petitioner aggrieved by the order of the Appellate Authority dated 05.05.2010 preferred revision petition before the revisional authority, who stayed the order of the appellate authority dated 05.05.2010. Consequently, the 4th respondent-Estate Officer implemented the order dated 20.11.2009. On 30.11.2010, revisional Authority allowed the revision petition of 4th respondent-Estate Officer, PUDA, while approving the order dated 20.11.2009 by which forfeited 10% for allotment price of the site while setting aside appellate authority's order dated 05.05.2010.

(h) The petitioner aggrieved by the order of the Revisional authority approached this Court. On 26.08.2011 CWP No. 1619 of 2011 filed by the petitioner was allowed in part. An extract of the order is reproduced herein.

> *"In this view of the matter, I have no option but to partly allow the writ petition, set aside order 30.11.2010 (Annexure P-13) and remit the matter to the revisional authority to consider and decide the matter afresh, in accordance with law.*

Lest this order is misunderstood as a direction that the respondents cannot or should not impose the maximum forfeiture, it is hereby clarified that the right to impose maximum forfeiture is statutorily conferred but may only be exercised after assigning clear and cogent reasons.

Parties are directed to appear before the Joint Secretary to Government of Punjab, Department of Housing and Urban Development Chandigarh-cum-Revisional Authority, on 12.10.2011 who shall decide the matter within three months of the receipt of a certified copy of this order."

(i) Pursuant to the order passed in CWP No. 1619 of 2011 revisional authority while re-examining the matter rejected the revision petition filed by the petitioner on 12.10.2011 (Annexure P-13).

(j) Once again, the petitioner aggrieved by the order of the Revisional Authority dated 12.10.2011 filed petition before this Court. Said CWP No. 9077 of 2012 was allowed on 10.12.2012 and remanding the case to the revisional authority. In view of the said order dated 10.12.2012, the petitioner submitted miscellaneous application before the revisional authority, who once again examined the matter and rejected revision petition of the petitioner on 23.05.2013. Hence, petitioner has presented this petition for the third time.

(3) Learned counsel for the petitioner vehemently contended that the revisional authority is contemptuous in passing the impugned order dated 23.05.2013 since it is not in consonance with the directions issued by this Court in CWP No. 9077 of 2012 dated 10.12.2012 (Annexure P-14). It was contended that there is a non-compliance of Section 45 of the Punjab Regional and Town Planning and Development Act, 1995 (hereinafter for short 'the Act'). Due to cancellation of allotment of commercial site the respondents should have resort to re-advertisement and receipt of applications from new

applicants to carry out afresh auction. This exercise hardly cost amount Rs.50,000/- to Rs.1 lac. Therefore, forfeiture of 10% is not fair enough. Moreover, the respondents have earned interest on the petitioners deposited amount etc.

(4) Learned counsel for the petitioner while referring to Section 45 of the Act, urged that its language fortifies petitioner's grievance that there shall be no compulsory forfeiture of 10% in every case. Rather Section 45(3) makes the limit of 10% beyond which the authorities shall not charge the forfeiture amount. Therefore,while ordering forfeiture of 10% individual facts and circumstances are to be taken into consideration. In other words, mechanically the concerned respondent cannot forfeit 10% of the amount in each and every case.

(5) It was also contended that before taking the decision regarding forfeiture of the amount, the allottee not only must be heard by the authority but his intention, motive and hardship are to be taken into consideration. In the present case, before passing the order of forfeiture petitioner was not heard. Further, learned counsel pointed out that in identical matters the respondents have applied different yard stick while forfeiting the amount. In this regard, he has pointed out that an Estate Officer's decision to forfeit 10% amount has been reduced by the appellate Authority/Revisional authority. Whereas in the petitioner's case, even though the appellate authority reduced forfeiture of 10% to 5%, but the revisional authority restored the maximum penalty without any cogent or valid reason. Therefore, the impugned action of the revisional authority is not fair.

(6) Per contra, the respondent's counsel submitted that petitioner had

violated conditions imposed in the allotment of commercial site i.e. in not paying Ist installment on 19.03.2009. Consequently, on 09.07.2009, 24.08.2009, 09.10.2009 three show cause notices were issued and the petitioner was directed to appear before the concerned authority on 20.10.2009. However, there was no response from the petitioner. In other words, petitioner did not respond to the show cause notices issued under Section 44(1), 45(1), 45(2) and 45(3). Therefore, PUDA had no other option except to cancel the allotment of commercial site. Consequently, order was also issued on 04.12.2009 informing petitioner that a sum of Rs.3,05,64463/- had been forfeited out of total deposit of Rs.6,95,73,000/-. Therefore, there is no infirmity in the impugned action of the respondents. It was further contended that reason for not complying conditions imposed in the allotment of commercial site to the petitioner are two. One is the Chief Executive Officer was suffering from 'serious illness' and the other one is 'global recession'. It was contended by the respondents that petitioner's participation in the auction bid and allotment are in the name of company and not in the individual capacity. One Mr. Sanjiv Bajaj, M.D. who has been authorized by the Directors of Company which shows that it was not one man show being run by Mr. Ashok Jain, who was suffering from ailment at the time of payment of Ist installment in the month of March, 2009. The respondents have disputed the facts in this regard and also contended that serious illness was not an hurdle for the petitioner-company to comply with the bilateral conditions agreed for the allotment of commercial site i.e. Payment of Ist installment on 19.03.2009. It was further contended that the petitioner company was supposed to pay Ist installment on 19.03.2009 a sum of Rs.7,72,21,682.50 whereas the petitioner deposited only one crore rupees on 04.01.2010 during pendency of the appeal before the appellate authority. Thereafter, on 26.03.2010 petitioner expressed to surrender the subject commercial site and requested for refund of deposited amount without any deduction. For about nearly one year, the petitioner failed to make payment of two installments which were due on 19.03.2009 and 19.03.2010 a sum of Rs.7,72,21,682.50 and Rs. 7,09,60,465/-. Having regard to the conduct of the petitioner and violation of allotment clauses, the 4th respondent Estate Officer rightly forfeited 10% amount which is in accordance with Section 45 of the Act. The petitioner has not made out a case so as to interfere with the order of the revisional authority dated 23.05.2013.

(7) Heard learned counsel for the parties and the record perused.

(8) For the purpose of considering the validity of forfeiting 10% of the amount for violating the conditions imposed on petitioner while allotment of commercial site, it is relevant to read Section 45 of the Punjab Urban and Town Planning Development Act, 1995, which reads as follows:-

> *"45. Resumption and forfeiture for breach of transfer: -*
> *(1) Where any transferee makes default in the payment of any consideration money, or any installment, on account of the transfer of any land or building, or both, under section* 43, *the Estate Officer may, be notice in writing, call upon the transferee to show cause, within* a *period of thirty days, why* a *penalty as may be determined by the Authority be not imposed upon him;*
>
> *Provided that the penalty so imposed shall not exceed the amount due from the transferee*
> *(2) After considering the cause, if any, shown by the transferee and after giving him* a *reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded, in writing, make an order imposing the penalty and direct that the amount of money due along with the*

penalty shall be paid by the transferee within such period as *may be specified in the order.*

(3) If the transferee fails to pay the amount due together with the penalty in accordance with the order made under sub-section (2) *or commits* a *breach of any other condition of transfer, the Estate Officer may, by notice in writing call upon the transferee to show cause within* a *period of thirty days, why an order or resumption of the land or building or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed*, *ten percent* of *the total amount* of *the consideration money, interest and other dues payable in respect* of *the transfer* of *the land or building or both, should not be made.*

(4) After considering the cause, if any, shown by the transferee in pursuance of a *notice under subsection* (3), *and any evidence he may produce in respect* of *the* same *and after giving him* a *reasonable opportunity* of *being heard in the matter, the Estate officer may, for reasons to be recorded, in writing, make an order resuming the land or building or both,* as *the* case *may be, and direct the forfeiture* as *provided in sub-section (3)* of *the whole or any part* of *the money paid in respect* of *such transfer.*

(5) Any person aggrieved by an order of *the Estate Officer under section* 44 *or under this section may, within* a *period* of *thirty days* of *the date* of *the communication to him* of *such order, prefer an appeal to the Chief Administrator in such form and manner, as may be prescribed;*

Provided that the Chief Administrator may entertain the appeal after the expiry of *the said period* of *thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filling the appeal in time.*

(6) The Chief Administrator may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he thinks fit.

(7) The Chief Administrator may either on his own motion or on an application received in this behalf at any time within a *period* of *six months from the*
date of *the order, call for the record* of *any proceedings in which the Estate Officer has passed an order for the purpose* of *satisfying himself as to the legality or propriety* of *such order and may pass such order in relation thereto as he thinks fit;*

Provided that the Chief Administrator shall not pass an order under this section prejudicial to any person without giving him a *reasonable opportunity* of *being heard.*

(8) Where a *person is aggrieved by any order of the Chief Administrator, deciding the case under subsection* (6) or *subsection* (7), *he. may, within thirty days* of *the date* of *communication to him* or *such order, make an application is writing to the State Government for revision, against the said order and the State Government may confirm, alter or rescind the order of the Chief Administrator."*

(9) Object of the above provision is to see that prospective auction do not indulge in speculative, unrealistic or unholy bids to oust the genuine and bonafide bidders. The forfeiture clause acts as a deterrent against those who intend to cheat or play fraud against PUDA in the matter of auction of public property. The scheme of the provision is thus to protect the right and interest of the PUDA in the matter of auctioned property where there is a breach of conditions imposed in respect of transfer of the land or building or both. It is a discretionary power assigned to the competent authority to forfeit maximum of 10% of the amount though to be exercised judiciously and to achieve the above illustrated object(s).

(10) It is undisputed that petitioner was a successful bidder in the auction of commercial property (Choti Bardari Site Kothi No. 40-D), Chank

Site, Patiala. The petitioner had deposited 25% of the total value of the land. On the reduction of area in square yard from 5510.50 to 5214.230 square yards, revised order was issued i.e. petitioner was required to deposit 75% of the tentative price of site in 4 installments. The petitioner was given to pay the balance amount of 75% in 4 installments on 19.03.2009, 19.03.2010 and 19.03.2011 and 19.03.2012. The petitioner failed to pay the very Ist installment on 19.03.2009. He was required to deposit total amount of Rs.7,72,21,682.50 which includes principal amount and interest. For not having paid the Ist installment on 19.03.2009, the respondents PUDA issued show cause notices on 09.07.2009, 24.08.2009 and 09.10.2009. In fact, the petitioner was personally directed to appear on 20.10.2009. The petitioner neither replied to the show cause notice nor appeared on 20.10.2009 to appraise the reasons for violation of conditions of allotment of plot. In view of these facts and circumstances, Estate Officer, PUDA, canceled the allotment of commercial site and consequential order was passed on 04.12.2009 forfeiting a sum of Rs.3,05,64,463 out of total deposit of Rs.6,95,73,000/-.

(11) It is evident that the reading of pleadings that the petitioner has not approached court with full facts of the matter. He has suppressed the facts relating to issuance of notices dated 09.07.2009, 24.08.2009 and 9.10.2009 by 4th respondent before cancellation of allotment. The petitioner is guilty of suppression of material facts.

(12) The petitioner sought for cancellation of forfeiture order and orally requested that forfeited 10% amount be reduced in view of the discretionary powers vested with the authorities. At this stage, it is relevant to quote meaning of the forfeiture. Extract of the same is reproduced herein:-

> *"Black's Legal Dictionary states that "to forfeit" is "to lose, or lose the right to, by some error, fault, offence or crime",*

> *"to incur a penalty". "Forfeiture", as judicially annotated, is "a punishment annexed by law to some illegal act or negligence...", "something imposed as a punishment for an offence or delinquency". The word, in this sense, is frequently associated with the word "penalty". It must bear the same meaning of a penalty for breach of a prohibitory direction. The Criminal Procedure Code, customs and excise laws and several other penal statutes in India have used diction which accepts forfeiture as a kind of penalty."*

(13) In view of Section 45 of the Act, the respondents have rightly invoked their power and forfeited 10% of the value of the commercial property. The petitioner cannot plead equity having regard to his conduct that had he approached the authorities in the month of March, 2009 before the Ist installment with the request to cancel the allotment. Question of reducing forfeiting amount would have arisen, but for the fact that petitioner failed to deposit even Ist installment amount and thereafter, least bother to answer to the show cause notices or to appear before the authorities. Petitioner opened his eyes only when the allotment of commercial property was canceled. Therefore, the petitioner has not made out a case so as to interfere with the order of the revisional authority.

(14) The petitioner failed to fulfill its obligation in terms of the relevant clauses of the allotment of letter of March, 2009 and thereafter, on 04.01.2010 only rupees one crore was offered as against the obligations to deposit Rs.7,72,21,682.50.

(15) The respondents action to cancel the allotment of commercial plot as well as forfeiting 10% of the value of the property are thus in order. We uphold the order of the revisional authority dated 25.03.2013. The respondents

however, are directed to pay the difference amount if any lying with the 4th respondent-Estate Officer along with 8% interest per annum within a period of 4 months to the petitioner.

(16) Accordingly, writ petition is dismissed.

(SURYA KANT)
JUDGE

(P.B.BAJANTHRI)
JUDGE

12th October, 2015
pooja saini